

ENVIRONMENT CONFLICT RESOLUTION TO THE KARST TOPOGRAPHY EXPLOITATION WITH STRICT LIABILITY PRINCIPLES

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Abstract

In conducting mining activities, the community of Gunung Kidul is less concerned about environmental aspects. There are also companies that do it with large tools, thus causing the environmental damage and also a conflict between them.

This research is socio-legal research. The type of data used in this research is primary data and secondary data.

The result of the research shows that 1) the current regulations are Government Regulation No 26 of 2008 on National Territorial Layout Plan and the Regent of Gunung Kidul Circular Letter No 540 of 2011 about the prohibition of mining in karst area not going well. The latest Regulation is the Governor of the Special Region Yogyakarta No 31 of 2015 on The Procedures of Granting Mining Business License, where the mining sector which previously was the authority of the district government, was changed to the authority of the provincial government. 2) Despite some regulations that prohibit the mining of karst areas, mining by some parties are still ongoing. Each has a different interest. The author argues that the principle of strict liability should be strictly enforced. 3) Article 88 of Law No. 32 of 2009 has regulated the strict liability but until now there are no rules of implementation, so it is not easy to apply.

Key words: conflict resolution, Karst, Strict Liability

A Background of the problem

Karst is an area vulnerable to environmental damage. Mining of the karst area that is now becoming uncontrollable results in environmental damage. The damage originated from logging vegetation cover to support limestone mining activities. As a result of the logging of the vegetation, the karst hills are deforested. Mining activities to extract valuable digging materials from the earth's stomach of Indonesia has been going on for a long time. The basic reason for this activity is relatively unchanged, namely

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economic reasons. Another thing that is also relatively unchanged is the basic concept of management. Changes that occur more on the scale of its activities which from year to year shows the intensity of improvement and expansion.

Another conflict occurred in Gunungkidul District of Yogyakarta. The exploitation of limestone mining is massively increasingly alarming. The mining business activity in Gunungkidul Regency is currently done by most of the people miners and dozens of big companies. Emerging exploitation of natural resources between small communities and large corporations. The community does mining for the cost of living while the company for industrial purposes. Limestone mining is an attempt to destroy the karst area because the damage caused by limestone mining cannot be repaired. Until now, the government of Gunungkidul looks helpless. If you look at Government Regulation Number 26 of 2008 regarding National Territorial Layout Plan that the karst area is a geological protected area, it is clearly forbidden for mining. However, the implementation of the Circular Letter Number 540/0196 dated February 7, 2011, on the prohibition of mining in karst area is also not going well. Until now, still rife lime miners activities both legal and illegal. This becomes a big problem because it involves the livelihood of the people and the environment. Moreover, areas like this are prone to horizontal and vertical conflicts. The overlapping of regulations between the central and regional governments is also unclear.

The latest regulation was issued in May 2015 of the Governor Regulation (Pergub) of DIY Number 31 of 2015 on The Procedures of Granting Mining Business License. This policy is a form of law enforcement effort in order to evaluate, discipline and disentangle chaotic mining in DIY, including those in Gunungkidul, making almost all mine processing plants closed. This regulation is a follow-up of Law Number 23 of 2014 on Regional Government, where the mining sector which was previously the authority of the district/city government, was changed to the authority of the provincial government. Automatically all mining business permits in Gunungkidul that

have expired must get permission from the Governor, especially those who have not been licensed.

Rules already exist, but mining by some parties is still ongoing. Each has different reasons, according to their own interests. Society for economic and corporate reasons to strengthen its industry. The writer argues that the principle of strict liability should be strictly enforced. Article 88 of Law Number 32 of 2009 has stipulated the strict liability but until now there are no rules of implementation so it is not easy to apply, even the knowledge of the writer has never been implemented.

B. Problem Formulation

Starting from the description in the background of the above problems formulated several important issues that need to be investigated more deeply:

- 1) What is the implementation of environmental conflict resolution as a result of The Karst Topography exploitation during this time ?.
- 2) Is the regulation of environmental conflicts that have occurred so far as a result of The Karst Topography exploitation has solved the problem?
- 3) What is the ideal model of environmental conflict resolution as a result of The Karst Topography exploitation with strict liability principle?

C. Special Purpose

The general objective of this research is to examine the Resolution of Environmental Conflicts on the exploitation of karst topography with the principle of Strict Liability.

The specific objectives to be achieved during the research are:

- 1) Finding data, reviewing and analyzing the implementation of environmental conflict resolution as a result of karst topography exploitation in Gunungkidul.

- 2) To examine and analyze the regulation of environmental conflict resolution that occurred during this time, as a result of karst topography exploitation of karst area in conflict, that is in Gunungkidul.
- 3) Formulate the ideal model of environmental conflict resolution as a result of Karst topography exploitation with Strict Liability principle

C. Research Methods

1. Research Type

This research is a socio-legal research that is research in the form of empirical research that is oriented to the discovery of theories about the process of occurrence and about the process of law work in society, or investigating legal relation with other social phenomena.

2. Research Materials

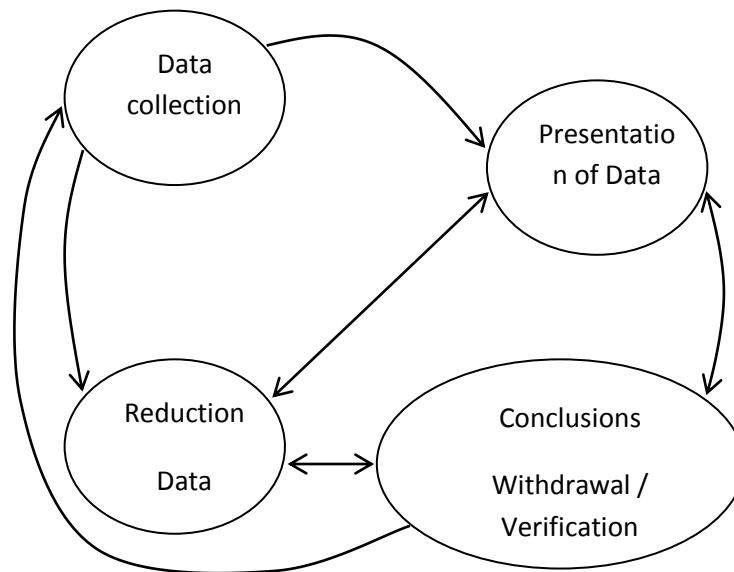
The data type used in this research is primary data and secondary data. Primary data is required to look at the implementation of the environmental conflict resolution as a result of The Karst topography. Primary data obtained by conducting interviews on respondents and resource persons. In addition, direct interviews were conducted on the perpetrators of pollution and environmental destruction to search for data and assess the resolution of environmental conflicts as a result of exploitation. While secondary data consist of: Primary Material, Secondary Material, and Tertiary Law Material is the legal material which gives directive or explanation to Primary Law Material and Secondary Law Material.

3. Research Location.

Research conducted in Gunungkidul District of DIY, where many areas of karst rocks that occur illegally mining.

4. The Data Processing Technique and Analysis Data

In this study, the data obtained were analyzed using flow model of analysis.



In more detail, the data obtained from the research, either library or field research, processed and analyzed critically and analytically presented descriptive qualitative. The data analysis phase is an important step in a research process.

In connection with a legal research seeking answers to legal issues that plunge into the issue of protection of victims, it is important to analyze not only the emphasis of the major premise sourced from both formal and material law but the premise is also sought from existing theories, all of which are directly or indirectly based on the data obtained through inductive logic research.

D. Result and Discussion

1. The Implementation of Environmental Conflict Resolution as a Result of Karst Topography Exploitation During This Time.

Karst area of Gunungkidul Regency with a large area, potential environmental degradation caused by the natural environmental condition,

and will be further aggravated if human activities in mining tend to damage the environment.

Gunung Kidul Regency, Yogyakarta is known as karst area (limestone). The karst area is about 807 sq km or 53% of Gunung Kidul Regency which is 1,483 sq km. The wealth of karst is the main attraction of investors to do limestone mining in this area. There are several mining companies as well as mining businesses of the community who perform karst exploitation activities in Gunung Kidul. Based on Inventory and verification data from the Department of Energy and Mineral Resources (EDSM) Special Province of Yogyakarta there are 7 (seven) companies that do the limestone mining with the total area of exploitation 40 thousand square meters. While the number of community mining business there are 14 businesses that verified its exploitation permit with the amount of exploitation around 7 thousand meters of allery. Almost all of these companies have already finished their licenses, but now there are still some who do illegal mining.

The karst area has several important features. The characteristics in the form of alkaline soils, high calcium (Ca), high magnesium (Mg), periodically dry periods, have a higher cation exchange capacity than similarly formed soils formed from different parent materials, fertility and the depth of the soil varies considerably. The karst area also contains in the form of, andesite breccia, pumice stone, and tufan sand. The natural resources potential of mine in Gunungkidul Regency consist of limestone as much as 17.492.706.780 m³, pumice as much as 2,050,018,491 m³, sand as much as 3,777,267.476 m³, and andesite breccia as much as 1.017.193.560 m³.

A number of mining reserves are then the attraction of mining, to do limestone mining though, not all activities meet the requirements of land certificates, building permits (IMB), environmental permits, and so forth. Most mining companies use modern tools capable of working on larger and faster scales such as rapid blasting systems, heavy equipment such as excavators and rakes, while for community mining, using traditional techniques and equipment such as hoes and shovels. Mining conducted by the community is more based

on the fulfillment needs of life, while mining companies operating in Gunungkidul Regency are further used for trade commodities.

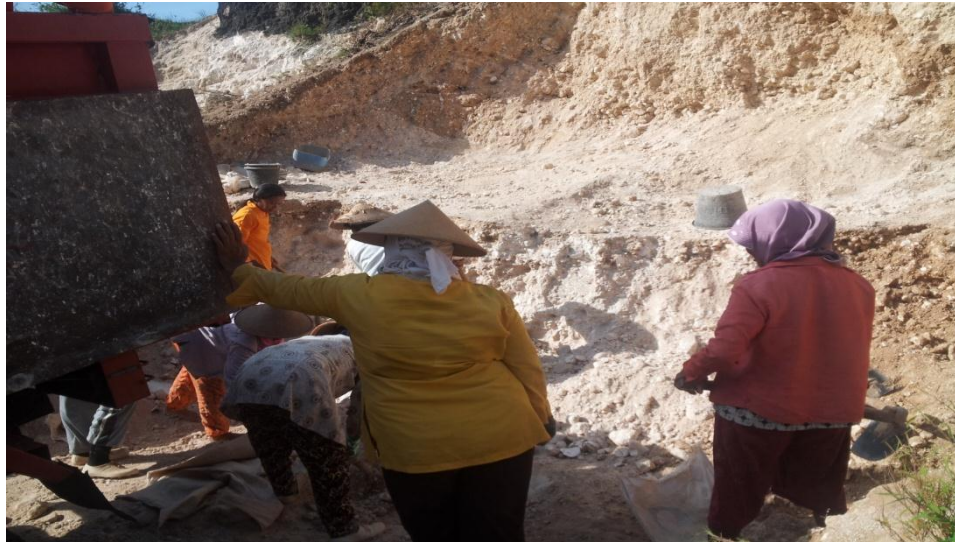
But now the exploitation of limestone mining is massively increasingly alarming. Limestone mining is an attempt to destroy the karst area because the damage caused by limestone mining cannot be repaired. Starting from the poverty chain, it becomes one of the factors that some people of Gunungkidul depend on by mining the stone. That's where the spinning economy wheel, which was just a mine of people using traditional tools, is now beginning to dominate the heavy equipment of investors.

The effect is that the community mines are losing competitiveness, thus only becoming laborers in large companies. Some companies that have been revoked a permit at this time was already not doing karst rock mining again. But it turns out there are companies that have been revoked permission to this day is still in production. This is because people who do mining activities, then the results purchased by the company earlier.

Even the public is given the convenience of being able to borrow or borrow money to the employer if it takes for example to pay his child's tuition then paid later with karst rocks from the mine. Thus society is made to be highly dependent on the entrepreneur. As a result, environmental damage continues due to continuous mining. Mining activities also become irregular. Mining is done by creating groups. While the government does not firmly take action against the perpetrators.



The photo above shows a citizen who mines traditionally with a simple tool, while his friend waits under it to transport it into a truck that has been provided. Their mining system works together, then the sale of one truck is shared. One group, there are four or six people, can also be more. They involve a wife, a daughter or a boy. Current regulations have not been able to prevent the exploitation of the Karst area, although the company has been formally no longer operational but utilizes citizens as miners. Companies and citizens who initially conflict in mining, now actually collaborate that may not be realized by citizens. For the people who matter is the needs of everyday life are met.



B The regulation of environmental conflicts that occurred during this time as a result of karst rock exploitation.

The first regulation on karst was the Decree of the Minister of Mines and Energy No. 1518 K / 20 / MPE / 1999 dated September 29, 1999, which was subsequently refined by Decree of the Minister of Energy and Mineral Resources No. 1456 K / 20 / MEM / 2000 dated November,3,2000 on

Guidelines for the Management of Karst Areas (Kepmen ESDM 1456/2000).

The minister's decree divides karst areas into three classes, namely

- a. Class 1 is a karst area which has a source of clean water (underground river), active cave, etc., so it becomes a protected area.
- b. Class 2 is karst which has caves but is not active and has no source of water, so it can be exploited or mine origin through Amdal study.
- c. Class 3 is a karst area that may be mined because it does not have criteria such as Class 1 and Class 2 karst.

The Decree of the Minister of Energy and Mineral Resources No. 1456 K / 20 / MEM / 2000 was subsequently revoked by the Ministerial Regulation No. 17 of 2012 on the Establishment of the Karst Landscape Area. This Ministerial Regulation contains guidelines for determining the landscape of karst in order to accommodate the substance needed for spatial planning. The main objective is the same as the main objective of the Ministry of Energy and Mineral Resources 1456/2000 which was previously issued to protect, preserve and control the utilization of the landscape of kars. This regulation still creates controversy because when the local government conducts an investigation, it generally has an instant interest, and the industry becomes the top choice. That is why the conflict between the cement industry entrepreneurs (usually supported by the authorities) is faced with farming communities that are usually supported by NGOs in the karst region.

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local government conducts an investigation, it generally has an instant interest, and the industry becomes the top choice. That is why the conflict between the cement industry entrepreneurs (usually supported by the authorities) is faced with farming communities that are usually supported by NGOs in the karst region.

Until now, the government of Gunungkidul looks helpless. In Government Regulation Number 26 of 2008 regarding National Territorial Layout Plan that karst area is a geological protected area, so it is clearly prohibited for mining. Its implementation through the Circular Letter Number 540/0196 dated February 7, 2011, on the prohibition of mining in the karst area is also not going well. Until now, still rife lime miners activities both legal and illegal. This becomes a big problem because it involves the livelihood of the people and the environment. Moreover, areas like this are prone to horizontal and vertical conflicts. The overlapping of regulations between the center and the regions is also unclear.

The local government of Gunungkidul did the neglect of the destruction and violation of building policy as regulated in Gunungkidul Regency Regulation Number 11 of 2012 on Building, and Regulation of Regent of Gunungkidul Number 34 of 2012 on Implementation Guideline of Gunungkidul Regency No. 11 of 2012 about Building.

Based on the above, Coalition of the Sewu Mountains Care Community (KMPPS) calls on the Government of Gunungkidul Regency and the parties to:

1. Stop the destruction of the Karst Gunung Sewu Landscape Area
2. The Government of Gunungkidul Regency is obliged to immediately stop the development process undertaken by PT. Mount Samudra Tirtomas by sealing the location.
3. To carry out the mandate of the Medium-Term Development Plan (RPJMD) of Gunungkidul Regency to develop and optimize the orientation of regional economic development based on agriculture, fishery, forestry, and tourism and other cultivation activities in an

efficient, effective, competitive, sustainable, and environmentally consistent.

4. The Government of Gunung Kidul Regency is obliged to maintain and protect the Karst Landscape Area (KBAK) of Gunung Sewu as a geological protected area from the form of destruction and utilization by changing the landscape.
 5. Invite elements of society to participate in maintaining the sustainability of landscapes and ecosystems Karst Gunung Sewu
- To protect the karst area from irresponsible human activities, the government has actually established regulations governing the protection of karst areas, both in management and in the spatial-related policies. One of them is the Decree of the Minister of Energy and Mineral Resources. 1456 of 2000 on Guidelines for the Management of Karst Areas. In the regulation karst area is divided into three; Class Karst Area is a protected area in which no mining activities are allowed. Other activities may be carried out provided they do not interfere with the karstification process and do not damage the karst area function. Karst Class II is a karst area within which mining activities may be carried out with environmental impact assessment (AMDAL) studies, environmental management efforts (UKL) and Environmental Monitoring Efforts (UPL). Karst Area Class III is an area. A number of mining reserves are then the attraction of mining people to do limestone mining, although not all activities meet the requirements of land certificates, building permits (IMB), environmental permits, and so forth.

C Ideal model of environmental conflict resolution as a result of Karst Topography exploitation with strict liability principle.

The conflict between large miners, in this case, entrepreneurs who use large tools dealing with people who mined karst with simple tools, stopped after the revocation of mining business permit (IUP) to the company. The Public Works Department-Energy and Mineral Resources (PU-ESDM) of Yogyakarta revoked 28 mining permits until the end of 2015. The permits

there are overlapping with protected forests and are no longer active. As stated by Edi Indrajaya, Head of Energy and Mineral Resources Department of PU-ESDM in Yogyakarta, however, out of the 28 revoked, ten IUPs were revoked due to overlapping with protected forests and were no longer inactive. Eighteen validity periods expired and not renewed.

Actually, all mining done by both society and company both violate the law. because of karst area in accordance with The Regulation of The Minister of Energy and Mineral Resources number 17 of 2012 concerning The Karst as The Geological Conservation Area. In Article 2 Paragraph (1) Sub-Paragraph g The Area of Geological Nature Reserves includes karst as stipulated in the law regarding karst landscape area.

Law No. 32 of 2009 on Environmental Protection and Management stipulates the strict liability, which the researchers believe is appropriate for this case. Article 88 of Law No. 32 of 2009: "Everybody having action, business and/or activity using B3 (toxic and hazardous materials), producing and/or managing B3 waste and /or causing serious threat to the environment shall be responsible absolutely for the incurred losses without necessary to prove substance of mistake." In Strict liability, the criminal offender can already be convicted only of the fulfillment of elements of a criminal offense regardless of whether the offender is guilty or not. Not all criminal offenses can be applied to this principle of absolute accountability, but only certain offenses are: if the offense is committed by a person in the exercise of his profession, which contains expertise, social responsibility, and corporates, which is supported by a code of ethics.

James E. Krier argues that the doctrine of absolute responsibility can be a tremendous aid in the judiciary on environmental cases, as many activities which, in the experience of causing harm to the environment, are dangerous acts, to which the provisions of liability without error can be applied.



If the company remains stubborn when it has been revoked its business license, but in practice, it continues to operate by utilizing citizens, then the destruction of the environment continues to occur. The erosion of limestone rocks is irregular, some are eroded from above and some are from the bottom so they look like caves. This is dangerous because one day it can be avalanched.



This image shows the mining of karst lime rocks eroded like caves, this is dangerous. With such circumstances, if it is not imposed sanctions it will happen all the time. The responsibility by the entrepreneur is given to the victim without seeing any error or not, as long as it harms the other party. Although in court examination later errors are not proven as long as there is an element of loss of the other party then the obligation to compensate for losses remain. If proven to be guilty then the company as the perpetrator other than being sentenced shall also remain liable to the victim or the injured party.

E. Conclusion and Suggestions

1. Conclusion

Based on the results of research and discussion of problems, then some conclusions can be drawn as follow :

1. Implementation of environmental conflict resolution as a result of Karst topography Exploitation during this time. At first, there was a conflict between the community and the companies that made Karst topography Exploitation because the Company used a large tool, while the traditional mining community. However, after the company's business license was revoked, the community became the company's partner. The community keeps mining but the results are accommodated by the company.
2. The regulation of environmental conflicts that have occurred during this time as a result of Karst topography Exploitation has solved the existing problems. Actually, existing regulations have been able to overcome the problem of exploitation of karst topography both by society and company. But the lack of law enforcement from the apparatus even seemed to let the exploitation of karst topography continue.
- 3 The ideal model of environmental conflict resolution as a result of Karst topography exploitation with strict liability principle As mining continues, the need for strict sanctions to actors, especially corporations, is required. By applying the principle of strict liability, so that without seeing any mistakes or not on the origin offender, harm the other party then it should compensate the

victim. If found guilty, a company other than, sentenced shall also be liable to the victim.

BIBLIOGRAPHY

Johny Ibrahim, 2007, *Teori&MetodologiPenelitianHukumNormatif*, Bayumedia Publishing, Malang.

Koesnadi Hardjasoemantri, 2000, *Hukum Tata Lingkungan*, Gajahmada University Press, Yogyakarta.

Matthew B Miles dan A Michael Huberman, 1992, *Analisis Data Kualitatif*, UI Press, Jakarta.

Penjelasan umum Rancangan KUHP Konsep Tahun 2008.

RomliAtmasasmita, 2009, *Perbandingan Hukum Pidana Kontemporer*, PT FikahatiAneska, Jakarta.

SoetandyoWignjosoebroto, 2007, *Disertasi Sebuah Pedoman Ringkas Tentang Tatacara Penulisannya*, Laboratorium Sosiologi Fakultas Ilmu Sosial Dan Ilmu Politik Universitas Airlangga, Surabaya,

Yeni Widowaty, 2011, *Kebijakan Hukum Pidana Dalam Memberikan Perlindungan Hukum Terhadap Korban Tindak Pidana Lingkungan Hidup Oleh Korporasi*, Disertasi, Program Doktor Ilmu Hukum UNDIP, Semarang.

<http://MONGABAY.CO.ID>, Dilema Tambang Karst Gunung Kidul: Kebutuhan Perut Vs Melindungi Alam

<http://www.walhi.or.id/2017/07/31/SelamatkanKawasanBentangAlamKarstdanRuangPenghidupanWargadariAncamanInvestasiPembangunanBerisikoDiKabupatenGunungkidul>, 31 Juli 2017